IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

RETRACTABLE TECHNOLOGIES INC.	*	Civil Docket No.
	*	2:07-CV-250
VS.	*	Marshall, Texas
	*	
	*	October 30, 2009
BECTON DICKINSON & COMPANY	*	9:30 A.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:
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(Proceedings recorded by mechanical stenography, transcript produced on CAT system.)

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P R O C E E D I N G S

(Jury panel seated.)

COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated, Ladies and Gentlemen.

Ms. Martin, if you will call the case scheduled for jury selection.

COURTROOM DEPUTY: The Court calls Civil Action No. 2:07-cv-250, Retractable Technologies versus Becton Dickinson and Company.

THE COURT: Are the parties ready for jury selection?

MR. CARROLL: Plaintiffs are ready, Your Honor.

MR. BECK: Defendants are ready, Your Honor.

THE COURT: Good morning, Ladies and Gentlemen.

As introduced, my name is David Folsom. I'm one of the, I believe, eight district judges in the Eastern District of Texas, which is a large district consisting of some 43 counties running from Beaumont over to Plano, Sherman, back up to Texarkana with divisions in Tyler, and obviously Marshall, Lufkin. I believe that pretty well covers -- Sherman, Plano -- the district.

We're here today for jury selection. And let me give you a very thumbnail sketch about what will take place. And I know you've seen the videos already, and I'm not going to try to cover territory that's already been covered, but, generally, the manner I go about jury selection.

Very shortly -- and we appreciate, the Court and the parties, your time and attention to the jury questionnaires, which I know took some time to complete on the front end but will save us time in the jury selection process.

And for those of you who may have privacy concerns, I've instructed the lawyers at the end of the selection process to return all the copies, and we will destroy all but the original, which we'll keep under seal so it will not be open to the public for inspection.

But we appreciate that.

We're going to try to conserve your time, because, as you know, there's a second jury to be selected for Judge -- by Judge Everingham for Judge Ward, one of the other district judges in the district, for a case that's going to be tried here in Marshall later in the month of November.

But very shortly, I will ask each of you to stand and simply give your names so the lawyers can associate your face with your jury questionnaire.

Now, each of you have a number that you're holding, and we're not trying to make this too informal, but I'm confident, from previous experience selecting these juries for many years, there are some of you that are going to need to stand up a number of times and respond to various questions or give comments. And rather than repeat your name each time, if you'll hold up and have your number in front of you, the court reporter can take down that number, and the lawyers will have that number and then can identify you from the list where your number corresponds with your names. So it's a matter of convenience.

So very shortly, I'll ask each of you to simply stand up, give your name.

After that's done, even though you were asked, I believe, on the jury questionnaire the names of the lawyers and parties involved in this case, I find it beneficial if the lawyers will provide an introduction and where their office is located and an introduction of their party, just to make sure if someone knows any of the -- especially local lawyers, that you can have an opportunity to alert us to that.

Now, after that's done, I'm going to ask each side to give a brief five-minute summary of what this case is about from their client's standpoint, the subject matter of the case.

Now, let me caution each of you, those particularly that are selected to serve on this jury, don't start forming any opinions about who should win or lose this case from this brief five-minute summary.

This is a summary from the parties' standpoint, a summary on behalf of the Plaintiff.

The Plaintiff is the party, as you probably heard in the video, that brings the action, and a summary by the Defendant, or the party against whom the action is brought.

Now, for those of you selected to serve on the jury, you'll be instructed that you are to arrive at your verdict based upon testimony from the witness stand, exhibits that are introduced into trial, or any stipulations the party may -- parties may enter into.

And a stipulation is simply an agreement what testimony would have been if testimony had been taken. So you may say, well, why the five-minute summary?

Well, this allows you to hear a little something about the case to know if there's something -- one, that you might know something about the case.

Occasionally, we'll have a case that receives local publicity or you hear about it by word of mouth. So this allows you to determine if you know anything by way of publicity about this case.

Or, two, there's something in your background that you may know something generally about the subject matter of this case. So that's what that five-minute explanation is designed to do.

I'll have some brief questions. And I've looked at your jury questionnaires but not nearly as closely as these lawyers have, and I only released these yesterday, I might add. And I'll try not to cover ground that's already been covered by your jury questionnaire nor will the lawyers, but, necessarily, there will be some follow-up questions as a result of some of the responses you have.

After my questions, I've given each side 20 minutes to ask follow-up questions or new questions not covered by the jury questionnaire.

Now, please keep in mind that at anytime that there's something of a personal nature, you're entitled to approach the bench, and we'll take it up in private with one lawyer from each side being entitled to be present. And the court reporter will be taking down -- taking down your comments and my comments and the comments of the lawyers.

In that regard, please speak up when you're responding to a question or making comments. The court reporter is taking down all of our comments, and it's important to speak up so she can take those down as they are spoken.

At the conclusion of this process, for those of you concerned about the schedule of trial of the case, I will give you information on the -- when this case will be tried, my normal -- normal practice of what is a typical day, so you'll know what your schedule is going to be.

And I'll give you an opportunity to tell me if this creates a hardship, so don't be concerned. I'm going to give everyone an opportunity to determine if it would be -- cause a hardship for anyone to serve on this jury.

You know, there are no right or wrong answers to any of these questions. Everyone on the panel may have a different response to a particular question. They may all be correct. We just need your honest thoughts on whatever the subject matter of the question might be.

And all of you are best-suited to determine obviously what that response is from each of you.

With those brief comments, we will start with Juror No. 1. I believe we have a mic that we'll pass around. If you'll just stand up and give us the benefit of your name, please.

JUROR CAMPBELL: Alison Campbell.

THE COURT: If you'll just pass the mic.

JUROR MCCORMACK: Ray McCormack.

JUROR FISHER: Celeste Fisher.

JUROR GEORGE: Thomas George.

JUROR BROWN: Linda Brown.

JUROR HATTEN: Ronald Hatten.

JUROR MCGUIRE: Debra McGuire.

JUROR GARRISON: Ronald Garrison.

JUROR DOTY: Martha Doty.

JUROR GILL: Barbara Gill.

JUROR E. JOHNSON: Elaine Johnson.

JUROR PEACE: Jeff Peace.

JUROR STACY: Laurie Stacy.

JUROR ROGERS: Flint Rogers.

JUROR NEWSOM: Joe Newsom.

JUROR ELWELL: Rona Elwell.

JUROR HAUGH: Glenda Haugh. Pronounced that way.

THE COURT: Thank you.

JUROR BAYNE: Diana Bayne.

JUROR KIPP: Robert Kipp.

JUROR ALDRIDGE: Debra Aldridge.

JUROR CROSSE: Merle Crosse.

JUROR WILKERSON: Nancy Wilkerson.

JUROR W. JOHNSON: Waylon Johnson.

JUROR SHIPP: Carla Shipp.

JUROR WHITLOCK: Juanita Whitlock.

JUROR STRAUSS: Bonnie Strauss.

JUROR BOUKNIGHT: Charles Bouknight.

JUROR NASH: Richard Nash.

JUROR PRICE: Leigh Price.

JUROR SHAW: Shirley Shaw.

JUROR RINIER: Dwight Rinier.

JUROR BLEDSOE: Judith Bledsoe.

JUROR STICKLE: Robert Stickle.

JUROR A. JOHNSON: Anita -- excuse me. Anita Johnson.

JUROR ARNOLD: Jerry Arnold.

JUROR SPIVEY: Jimmy Spivey.

JUROR HARDING: Dorothy Harding.

JUROR COX: James Cox.

JUROR PAYNE: Dennis Payne.

THE COURT: Is that everyone? I appreciate that introduction.

And I apologize. I introduced myself, but I didn't introduce my staff. Over to my left -- John, if you will please stand up.

This is Mr. John ++Lahon, who is a recent graduate of law school -- of law school in Houston. And he's going to be with me serving as a law clerk for the next year.

Then David Keyzer, who was a law clerk of mine a couple two or three years ago. He's from

California. Moved back; was in practice; missed East Texas so much he wanted to come back.

So those of you selected on -- thank you -- selected to serve will be seeing these two young men during the trial.

And then everyone's met Mel Martin, my courtroom deputy, who took care of, obviously, the jury qualifications. And she will handle the swearing in of witnesses and exhibits during the trial.

Judy Werlinger, the court reporter. As I told you earlier, it makes her job a lot easier if we all speak up so she can easily hear us.

Mr. Bill Potts, the court security officer. You will see Mr. Potts or someone else by way of the court security officer during the trial.

I believe I've introduced everyone.

Now, I'm going to ask the lawyers -- and one lawyer can introduce everyone, if you like -- provide an introduction and where your office is located and your client.

Mr. Carroll, you want to do that?

MR. CARROLL: If the Court please, Your Honor.

Good morning. Excuse me.

I'm Otis Carroll. I live over in Tyler,

and I'm one of the lawyers for the Plaintiff in the lawsuit. And the Plaintiff is a company in a county north of Dallas called Denton County. And the name of the company is Retractable Technologies, because that describes what we're here about, retractable technologies.

Retractable Technologies, the face is going to be a great face, and that's Ms. Kathryn Duesman.

And Ms. Duesman will you stand, please.

Ms. Duesman lives near Little Elm on her family farm. She is a nurse, and you will be hearing from her in this trial.

Thank you, Ms. Duesman.

The founder of Retractable Technologies and the fellow who invented the patents we're fussing over is Mr. Tom Shaw.

Mr. Shaw, would you stand, please?

Mr. Shaw lives up in Denton County as well.

Thank you, Mr. Shaw.

The lawyers you'll be hearing from is my friend, George Bowles and Roy Hardin, two fine lawyers from Dallas. And I guess -- is Tom going to address the jury?

Well, Tom, where are you?

I mean, Steve. Steve. It's starting already. I'm 60 years old.

Okay. And we three -- one, two, three -- we four will be addressing the Court. And I think that Michele Larios is our company lawyer. She's kind of our boss, so I need to introduce her.

And I believe that's it.

THE COURT: Who else is in your firm, Mr. Carroll?

MR. CARROLL: Deborah Race, my partner, my lawyer. Every firm has a lawyer; she's ours. She's here, and I believe that's it from our crowd.

Bill Lavender from Texarkana and Mike Miller from across the street. That's our crew, Your Honor.

THE COURT: Who else is in your office in Tyler?

MR. CARROLL: Oh, oh, oh, okay.

Pat Kelley, one of my partners. Collin Maloney, another one of my partners.

And I'm proud to say my daughter, who is a brand new lawyer, and her name is Mandy Nelson. I can't ever remember her married name, but she used to be Mandy Carroll.

And that's it. Thank you, Your Honor.

THE COURT: With this introduction -- and like I said, I know all these names were mentioned in the jury questionnaire, but I think it's helpful to see them in person and hear these comments.

Does anyone on the panel know any of the lawyers? Have you been represented by any of them or an immediate member of your family? And when I say immediate member of your family, I'm generally talking about husband, wife, mother, father, son, daughter, maybe brother, sister.

Does anyone know any of the lawyers on the Plaintiff's side of the case?

Does anyone know any of the -- know the Plaintiff, who you'll hear commonly referred to as RTI, or any of the corporate representatives?

Now, Mr. Beck --

MR. BECK: May it please the Court.

THE COURT: -- same introduction from the Defendant's standpoint.

MR. BECK: Thank you, Your Honor.

Ladies and Gentlemen, my name David Beck. I practice law in Houston, Texas.

Assisting me in this lawsuit will be my partner, Alistair Dawson. He's also from Houston. We also have David Carter from Texarkana. He's going to be working with us on this matter. And Lisa Pirozzolo from Washington --

MS. PIROZZOLO: Boston.

MR. BECK: Excuse me. Boston, Massachusetts, is also going to be working with us on this case.

And I'd like to introduce the representative of our client, which is Becton Dickinson, which is a medical device, medical product company.

And this is Mr. Bill Kozy, who's the Executive Vice President of the company, and he will be here during the trial. So you will see him throughout the entire trial.

And that, Your Honor, comprises our group.

THE COURT: Mr. Carter, who else is in your firm, since they're a little closer to Marshall?

MR. CARTER: All right. I have two partners who practice with me in Texarkana: John Mercy and John Tidwell.

THE COURT: Likewise, does anyone know any of the attorneys on the Defendant's side of the case, or have you been represented by them past or present, or an immediate member of your family? Or do you know the Defendant?

Yes, if you will please stand up. Yes?

JUROR PEACE: I know both of his partners, John Mercy and John Tidwell.

THE COURT: And how would you characterize knowing -- social or professional or --

JUROR PEACE: Social.

THE COURT: Social. Anything about that that would tend to give Mr. Carter's side of the case an advantage or disadvantage?

JUROR PEACE: No, sir.

THE COURT: Very well. You might have some follow-up questions in that regard, but thank you.

That's the type of information we're looking for as we go through this process.

Anyone else?

Thank you.

Now, I'm going to ask for this short, five-minute summary of the subject matter of the case from each party's standpoint. And I will caution you yet a second time, don't start forming any opinions about who should win or any of the -- decision on any of the merits of the case. This is for informational purposes only.

Mr. Carroll.

MR. CARROLL: If the Court please, Your Honor.

Ladies and Gentlemen, you know this is a patent lawsuit. You saw the film that the Judge showed you. The technology that we're talking about in this lawsuit has to do with what I, as a layperson, call a shot needle. And I think the term that the people who really know about them will use is a syringe and needle.

A syringe and needle.

The other term you're going to hear about in this case is a disease that has become, we think, a real problem and a health risk, and it's called needlestick. Needlestick.

What that means is when somebody gives me a shot with a sterile needle, once it punctures my skin, it's no longer sterile because it's been in me, and it becomes contaminated. And once it's contaminated, it's a risk, because nobody knows whether I have hepatitis or HIV or any other thing that could make somebody else get sick if they were to get stuck by that needle.

Now, here's what the invention that Mr. Shaw came up with, and Ms. Duesman's company, our company, sells. And this is all we sell, and that is our idea as to how to needlestick 100 percent of the time, and that is with a shot needle that retracts automatically inside the person once the shot is done. So that the nurse sticks me in the arm, pushes what you'll hear as the plunger of the syringe all the way down until all the medicine is in me.

And once she gets done, or he gets done, with pushing that plunger all the way down, the needle automatically pops back up into the barrel of that syringe where it can't hurt anybody ever, never, ever.

And that's our invention.

We say -- we say that our friends over here at Becton Dickinson knocked us off; that they took our idea and they put some bells and whistles on it and they sold it; but that it constitutes what you heard described today in Judge Folsom's film as patent infringement.

So during this case, what we will tell you about, through our witnesses, is, number one, what we believe to be the problem. And I think we're going to be in agreement as to this needlestick, the former name is something called bloodborne pathogens, I'm told.

And, number two, how Tom Shaw came up with his invention to solve this problem.

And, number three, why we say and will argue to you and bring you evidence that our friends over here infringed our patent or trespassed on our property.

At the end of the case, we will be asking you for a verdict that they have, in fact, infringed our patent and that our patent had value and that we're entitled to be paid a royalty.

You'll find out a little bit about our company. I told you just a second ago it's in Little Elm, Texas. Judge Folsom told you about the 43 counties in our judicial district. Believe it or not, Denton County is in the Eastern District of Texas, and that's where we are.

So we are in the judicial district with Marshall and Texarkana and Beaumont and Lufkin and Tyler. And we employ about 150 people up there, and that's where we are.

So that is about it for us, Your Honor.

THE COURT: Thank you, Mr. Carroll.

MR. CARROLL: Thank you.

THE COURT: Mr. Beck.

MR. BECK: May it please --

THE COURT: -- statement on behalf of the Defendant.

MR. BECK: Thank you, Your Honor. May it please the Court.

First of all, Ladies and Gentlemen, I

want to thank you for giving us a lot of information about yourselves on the questionnaires. And I know -- and my wife watched -- we tried a lawsuit one time, and she thought it a little bit unfair for the jurors to be telling us about your private lives without us saying something about ours, so let me just very briefly say that I'm married. Met my wife in high school. We dated for a long time, and after I got out of school, we got married. Been married for 40 years to the same woman. We've got three kids. The two girls were real easy to raise. The son was a little bit more of a challenge. Went from high school to the Marine Corps to 13 months in Iraq. And thank God he's back home, and he's back safe.

So just wanted to share with you a little bit, because we're going to be spending some time together. I just wanted to make sure that I was sharing a little bit of information about us as well.

Let me tell you about our position in this case. As you know, I represent Becton Dickinson. It is a company that began in 1897 right up Highway 59 in Texarkana.

You had two men, Mr. Becton and Mr. Dickinson, who met and shook hands in a train station in Texarkana. And the rest is history, as they say.

Becton Dickinson has been a pioneer and a leader in medical devices, in syringe and other forms of injection devices.

We have a dispute in this case. It's a legitimate dispute; it's a fight about technologies.

We're not going to have any dispute about needlestick injuries. Needlestick injuries have been a problem for a long time. Nobody disputes that needlestick injuries can cause serious and sometimes deadly type of injuries and disease.

But, fortunately -- fortunately in this country, and, frankly, elsewhere, we have created people that when they see a need, they come up with ideas to try to address that need. Different people come up with different ideas. Different people develop different technologies.

And that's really the dispute we have here. They have one way of utilizing a retractable syringe; we have another way.

They have one technology which is called friction and clamping. Ours is totally different. It's based on what you're going to hear as a cutting technology.

So our position is they've got a product;

they think their product is a good product. We have a product, which is different, which we think is a good product.

And at the end of the day, we believe that after you hear the evidence, you will conclude that these technologies are different; these products are very, very different; and that healthcare workers really ought to have a choice about selecting which of the technologies that they prefer. And that basically is what this lawsuit is about.

So, again, at the end of the day, we look forward to presenting our case to you, showing you our technology, showing you how it's different, and explaining to you why their technology, which they believe is a good technology, is very different from our technology and, therefore, there is no infringement.

THE COURT: Thank you, Mr. Beck.

MR. BECK: Thank you, Your Honor.

THE COURT: Now that you've heard a little more about the subject matter of this case, has anyone heard any publicity, word-of-mouth, news accounts, anything of that nature concerning either this lawsuit or perhaps the subject matter of this lawsuit, needlestick injuries and safety syringes? Anyone on the panel?

Now, I know from my review of the jury questionnaires, there are a number of members of the panel that either are involved in the healthcare industry profession or an immediate member of your family or maybe you give injections to yourself or a member of your family.

Will those that gave those responses simply raise your card, your number?

Give us a little time. 3, 4, 5, 14, 9, 10, 21, and 38.

Now, has anyone, to your knowledge, used the product of either of these parties, RTI or BD, as I will refer to them? Has anyone used those particular products before?

Yes. If you'll please stand up and tell us -- let me see -- Mr. George?

JUROR GEORGE: I'm an EMT intermediate, and we use the --

THE COURT: Excuse me. Mr. Potts will you give him the mic? It will be a little easier on our court reporter.

JUROR GEORGE: Okay. I'm an EMT intermediate, and I have used BD both the -- for the IV caths. I've never used the particular product that they're talking about now.

THE COURT: Have you used a safety --

JUROR GEORGE: Yes.

THE COURT: -- syringe of anyone's manufacture?

JUROR GEORGE: Yes.

THE COURT: Do you know who the manufacture might have been?

JUROR GEORGE: I think it was Johnson & Johnson.

THE COURT: Johnson & Johnson.

Anything about your -- your knowledge and your profession that might give one side of the case an advantage or disadvantage, you feel, in this case? Is there anything about the use of a product manufactured by BD that in your opinion might give one side of the case an advantage or disadvantage?

JUROR GEORGE: No, sir.

THE COURT: Thank you.

Anyone else that raised a card that might have used either a product of one of the parties or a -- particularly what I'll call a safety syringe or needle to prevent sticks? Has anyone else on -- yes, if you'll please stand up.

Ms. Fisher; is that correct?

JUROR FISHER: Correct. Celeste Fisher.

I'm a registered nurse, and I've used several different brands of safety syringes and IV needles.

THE COURT: Where are you employed?

JUROR FISHER: I work for the Hospice of East Texas in Tyler.

THE COURT: And tell us about your experience with those products, if you know the manufacturer of the products.

JUROR FISHER: I typically don't look at the labels. I just use whatever is in central supply. And so I've never really paid attention. I know I've used some of the BD products. I've seen those labels before, but if I were to say right now what brand of supply we have in our central supply room, I couldn't tell you.

THE COURT: Very well.

Anything about your knowledge of those products, regardless of who may have manufactured them, that might give one side of this case in your opinion an advantage or disadvantage?

JUROR FISHER: No.

THE COURT: Or would make it --

JUROR FISHER: No, sir.

THE COURT: -- inappropriate in your opinion to serve?

Sometimes you'll hear lawyers use the term, fair. Well, I'm confident everybody on the panel can be fair in this case, so I like to use the term, appropriate or inappropriate. If there's something about someone's background or training or knowledge that might make it quite appropriate for you to serve on one case but maybe not this case.

So you feel there's nothing about your background or use of the products that would give one side an advantage or disadvantage?

JUROR FISHER: That's correct.

THE COURT: Thank you.

I'm confident that there will be some follow-up questions from the lawyers and probably members of the panel.

Anyone else that has had experience giving injections that you need to talk about in terms of particularly safety -- safety syringes or needles?

Thank you.

Has anyone -- and I know from looking at the jury questionnaires, we've had at least one person involved in research and development. But anyone on the panel or an immediate member of your family that perhaps your job, or simply pastime, you're involved in research development maybe with a purpose of inventing something?

Anyone on the panel or an immediate member of your family that maybe has some involvement in research and development, inventing products, or maybe your employer has holds, what we call intellectual property patents? Anyone on the panel?

Maybe I was mistaken. I thought that -- yes. No. 14, Mr. Rogers.

JUROR ROGERS: I work for a company called Cloeren Incorporated, here in Marshall, Texas. And our parent company is in Orange, Texas.

THE COURT: Are you the software engineer?

JUROR ROGERS: No, sir. I'm a plant manager here in Marshall.

THE COURT: Plant manager. Very well.

JUROR ROGERS: Yes, sir.

Our owner, Peter Cloeren, Jr., is involved in a lot of patent work, and I'm not real familiar with it. I just know he holds a lot of patents for exclusion dies.

THE COURT: Anything about that that might give one side of the case an advantage or disadvantage?

JUROR ROGERS: Well, I've heard a little bit about what he's -- the lawsuits he's been through with patents. I'm not -- I'm not familiar with them.

THE COURT: Has he brought lawsuits or had lawsuits brought against him?

JUROR ROGERS: No, he's brought lawsuits.

THE COURT: Brought lawsuits.

JUROR ROGERS: Yes, sir, correct. I'm not sure who with. I'm not sure.

THE COURT: Anything about that, in your opinion, might give one side of the case an advantage or disadvantage?

JUROR ROGERS: No, sir.

THE COURT: Thank you.

Anyone else on the panel, you or an immediate member of your family, might have a similar experience or knowledge concerning this subject matter?

Thank you.

Does anyone -- when I am involved in a jury case, I'm fond of saying there are two judges in every case. I'm the judge of the law, and the jury selected will be the judge of the facts. You will judge the credibility of witnesses, and I'll give you instructions in that regard.

But one concept occasionally that members of panels have difficulty with is this concept I'm judge of the law, and I will give you the law that applies to this case. And you're duty-bound to follow that law whether you agree with it or not.

And I guess it would be nice if I could read the jury charge in advance and tell you what the law of this case would be, but oftentimes, we don't know until all the testimony is in what the jury charge will be, plus it would take me, I hate to tell you this, probably about 45 minutes to read it. That's been my experience. So we don't have the luxury of reading it on the front end.

But, occasionally -- and you'll probably -- if this case holds true, the lawyers, during their part of this case, will probably talk about the various burdens and what's required before you can find for or against a party.

And, occasionally, I'll have someone that sort of disagrees with what the law might be in this type of case or any other. And, occasionally, I'm told -- and that's quite fine, if that's your opinion -- that, Judge, I just don't agree with that concept. I should be able to determine what the law should be and apply it as I feel it should be.

One of the best examples I have of that, and I know some of these lawyers have probably heard it before, but I'm going to repeat it, because it brings this concept home very well.

A few years ago in Texarkana -- I have most of my dockets in Texarkana and then I'm in Marshall generally in October and March of each year.

But I'm selecting a criminal case up in Texarkana, and it involved marijuana, the possession of a rather large amount of marijuana. And I withdrew this statement, or words to that effect. I had someone in the jury panel -- I can remember the exact location -- stand up and say: Judge, I just have a problem following the law in this case.

And, generally, in a drug case, you expect to hear, well, I know people that have been damaged by drugs or a family member, and I just couldn't be fair.

But his statement was, he said: Judge, in my opinion, marijuana was put on the earth by God and it grows in nature, and I just couldn't convict anyone of possessing marijuana because it's grown in nature.

Well, his opinion was he just couldn't follow the law in that regard. So that's the concept I'm talking about.

And as the lawyers start talking about these concepts of maybe the law that applies in this case, what I'm looking for and what the parties are entitled to is a jury that can sort of set aside your common experiences, listen to the testimony from the witness stand, look at the exhibits, and arrive at a verdict based upon the law as I -- as I give it to you, and apply that law whether you necessarily agree with it or not.

Does anyone have any problem with that concept? If so, here's the time to let us know.

I hope I've explained it in an understandable fashion.

Now, in the past when I first started practicing law and first became a judge, you know, I would always instruct members of the jury not to read the newspaper or watch TV accounts. And I don't know if there will be any TV news on this or paper -- newspaper accounts. But now we have all the modern technology of internet.

And those of you selected to serve, I'm going to instruct you that you can't do research on the internet concerning the subject matter of this case.

There have been problems -- I've never had that, and I don't recall one in East Texas where jury members go on various websites and talk about their experiences, MySpace and others.

And I'm going to instruct you, you cannot do that. Some people, I think, are so addicted to their computer and those sort of websites that they just have difficulty not doing that.

Would anyone have any problem -- you can certainly use your computer, but you just can't research the subject matter of this lawsuit or tell your friends on the internet about your service on the jury during the trial.

Does anyone have any problem with that?

Thank you.

Now, I think that's, for the time being, going to be most of my questions. I'm going to turn it over to first Mr. Carroll.

The Plaintiff always goes first, and maybe you saw this in the video, which may seem a little unfair. But on most issues in the case, they have the burden, so they go first, and then the Defendant follows up.

Mr. Carroll.

MR. CARROLL: Thank you, Your Honor.

THE COURT: You've got 20 minutes --

MR. CARROLL: Thank you, Your Honor.

THE COURT: -- for you and follow-up questions.

MR. CARROLL: Thank you, Your Honor. If

the Court please.

Ms. Campbell, I've got to tell you, you provoked quite a controversy in our room last night when we were reading your questionnaire.

You want to know why?

JUROR CAMPBELL: Sure.

MR. CARROLL: Because you're the only person who knew how to spell plagiarism.

JUROR CAMPBELL: Fourth-grade teacher.

MR. CARROLL: Fourth-grade teacher.

Well, let me tell you what; we had a lot of funny, funny attempts to spell that word.

One of the issues in this case, we say, is plagiarism; that our friends over here took our property, our idea, and profited by it.

What do you -- what grade do you give your fourth graders if they copy somebody's paper and you find out about it?

JUROR CAMPBELL: Zero.

MR. CARROLL: A zero. In this case, we're offering them a 75. What do you think about that?

JUROR CAMPBELL: You're more lenient than I am.

MR. CARROLL: Well, let me tell you why.

One of the things that you're going to

hear about in this case is that patent law -- I think Judge Folsom will tell you this -- involves a concept that some of us in East Texas -- not me, unfortunately -- but some folks are fortunate enough to know about, and that's called a royalty.

Have you ever heard that term, a royalty?

JUROR CAMPBELL: Yes, sir.

MR. CARROLL: Let's see. You live in Ore City?

JUROR CAMPBELL: Uh-huh.

MR. CARROLL: And y'all have a fair amount of oil and gas production up there, and you know from time to time, if you're lucky and you own your property and your minerals, maybe an oil company will drill on it and maybe you'll get some royalty money.

JUROR CAMPBELL: Uh-huh.

MR. CARROLL: That's what we're asking for. We're asking for a royalty for what we say is their trespass against our property.

One of the things -- and this is -- I'm about to ask you a question, believe it or not.

THE COURT: That would be nice, Mr. Carroll.

MR. CARROLL: Thank you, Your Honor. I'll try.

One of the things that you're going to find out, if you're on the jury, is that we have to play like; we have to go back to the time we say they first trespassed and figure out what would have been done in the negotiation; that is, what we would have done way back then. And our burden is to prove what we think would have been done.

Now, do you have any problem going back and -- with us and looking at the world as it was in 2000, which is when we say this first trespass occurred?

JUROR CAMPBELL: No, sir.

MR. CARROLL: Okay. Because that's what the law is going to say.

All right. Thank you, ma'am.

Where do you teach, by the way?

JUROR CAMPBELL: Hudson PEP in Longview.

MR. CARROLL: Thank you.

Let me -- Ms. McGuire, where are you?

There you are.

And you are up in Pittsburg.

JUROR MCGUIRE: Correct. I live in Pittsburg.

MR. CARROLL: And you practice accounting and financial --

JUROR MCGUIRE: In Mt. Pleasant.

MR. CARROLL: In Mt. Pleasant. And I believe you're a CPA.

JUROR MCGUIRE: Yes, sir.

MR. CARROLL: Okay. Are you in the business from time to time of projecting values on royalties?

JUROR MCGUIRE: Not on royalties necessarily, no, sir.

MR. CARROLL: Have you ever heard the concept of a paid-up royalty?

JUROR MCGUIRE: Yes.

MR. CARROLL: Okay. And would you agree with me that from time to time it makes sense, if you have the opportunity, to go ahead and take your money upfront rather than risk what you and the other party think may happen doesn't happen?

JUROR MCGUIRE: Correct.

MR. CARROLL: I mean, that's -- sometimes that's pretty good business sense, is it not?

JUROR MCGUIRE: Yes, sir.

MR. CARROLL: So if our CPA in this case talks about a paid-up reasonable royalty that he says we would have talked about back in 2000, that's not a concept unfamiliar to you as a CPA.

JUROR MCGUIRE: That's correct.

MR. CARROLL: Okay. And you practice with your daddy?

JUROR MCGUIRE: No, sir. My husband, but he's retired.

MR. CARROLL: Well, good for him.

JUROR MCGUIRE: Yes.

MR. CARROLL: How does he get away with that?

JUROR MCGUIRE: I let him off.

MR. CARROLL: Okay. Thank you, ma'am.

And if I can do this, Ms. Fisher, I'm going to start with you, if you don't mind.

And then, Mr. George, I'm going to talk to you as well.

Has either of you -- and I know Judge Folsom asked you this -- but has either of you seen retractable technology?

You heard me describe it a minute ago. Have you ever seen that?

JUROR FISHER: I have.

MR. CARROLL: Okay. But you don't know who made it?

JUROR FISHER: I couldn't tell you. The ones that I've used, I couldn't tell you who the manufacturer was.

MR. CARROLL: Okay. Have you seen also the other non-retractable, quote, safety needles with various sleeves and devices that you have to manually put over the contaminated needle?

JUROR FISHER: Yes. We have -- we actually have those types at work.

MR. CARROLL: Okay. And you know that the industry actually still has unguarded needles out there?

JUROR FISHER: Correct.

MR. CARROLL: And a whole bunch of them.

Now, what do you suppose the answer is as to why there are unguarded needles still out there?

JUROR FISHER: My personal opinion would probably be that they're lower cost, I guess.

MR. CARROLL: Okay.

JUROR FISHER: You know, people are always looking at ways to find low cost --

MR. CARROLL: Okay.

JUROR FISHER: -- supplies. I don't know.

Maybe some smaller-type needles, subcutaneous needles, tubercular needles are probably more difficult to make into safety items because of their size.

MR. CARROLL: Okay.

JUROR FISHER: I don't know.

MR. CARROLL: Are you old enough to remember when cars didn't come with seatbelts?

Probably not.

JUROR FISHER: I think we had one of those when I was a kid a long time ago. I'm not sure.

MR. CARROLL: Well, I can tell you, there are a some of us who remember those days.

Who do you reckon required that car companies put seatbelts in cars? Do you think they did it on their own or somebody made them?

JUROR FISHER: I think it was probably a regulatory thing, our government.

MR. CARROLL: Okay. Is that common, in your experience, as to when products are made safe, that somebody makes an industry make them safe?

JUROR FISHER: I'm sure that the combination of the industry recognizing the need and the government saying that there's a need.

MR. CARROLL: Okay.

JUROR FISHER: My guess is more often it starts from a regulatory perspective.

MR. CARROLL: Okay. And healthcare is regulated, is it not?

JUROR FISHER: Very much so.

MR. CARROLL: Do you think healthcare needs to change? I mean, that's the big debate, right?

JUROR FISHER: I think there's room for improvement in a lot of areas in healthcare.

MR. CARROLL: Have you always done patient care in your practice?

JUROR FISHER: No. I started out doing patient care, and I'm currently in a supervisory role.

MR. CARROLL: There at the hospital?

JUROR FISHER: Yes, sir.

MR. CARROLL: Or here at the hospital?

JUROR FISHER: Well, it's at an office in Tyler, but we -- we serve 23 counties. So our nurses are in this area.

MR. CARROLL: Okay. Thank you, ma'am.

JUROR FISHER: Uh-huh.

MR. CARROLL: Mr. George, let me ask you basically the same questions that Ms. Fisher and I talked about.

Have you used retractable technology?

JUROR GEORGE: Yes, sir, I have.

MR. CARROLL: Do you know -- I think Judge Folsom asked you, but do you remember who made it?

JUROR GEORGE: No, sir. I think it was

made my Johnson & Johnson. I can't --

MR. CARROLL: Maybe you already said that.

JUROR GEORGE: Yes, sir.

MR. CARROLL: Okay. And is your answer the same as Ms. Fisher's, that you've also seen the non-retractable that requires you manually to put the sleeve or guard, or whatever you call it, over the needle?

JUROR GEORGE: Yes, sir.

MR. CARROLL: Have you ever heard the term, keeping your hands behind the sharp?

JUROR GEORGE: Yes, sir.

MR. CARROLL: What does that mean?

JUROR GEORGE: It means don't put your hand out where you could get a needlestick.

MR. CARROLL: Right. So the idea is that if that's my shot needle, I always want to be downstream of the point?

JUROR GEORGE: Correct.

MR. CARROLL: Have you ever had a needlestick?

JUROR GEORGE: No, sir. Came close a couple of times, but never an actual stick.

MR. CARROLL: And you agree with my

friend, David Beck, and me that that's a real risk?

JUROR GEORGE: Yes, sir, it is.

MR. CARROLL: Okay. You think industry is doing enough to deal with it?

JUROR GEORGE: Well, like she said, there's always room for improvement.

MR. CARROLL: Okay, okay. And are you an EMT here in Marshall?

JUROR GEORGE: No, sir.

MR. CARROLL: Where are you working?

JUROR GEORGE: I'm currently employed by Trinity Rail. We build railroad tank cars, and I -- you do first aid and things of that nature. I've been a volunteer EMS services and things of that nature. I also hold a state-certified EMS instructor.

MR. CARROLL: Okay. So you know all about shot needles?

JUROR GEORGE: Yes, sir.

MR. CARROLL: Okay. Thank you, sir.

And you live in Hallsville?

JUROR GEORGE: Yes, sir.

MR. CARROLL: Okay. Ms. Gill?

JUROR GILL: Yes, sir.

MR. CARROLL: May I chat with you?

JUROR GILL: Yes, sir.

MR. CARROLL: You work over in Longview at Good Shepherd?

JUROR GILL: No, sir. Here in Marshall.

MR. CARROLL: Here in Marshall?

JUROR GILL: Yes, sir.

MR. CARROLL: At what used to be Marshall Regional, but it's now part of Good Shepherd?

JUROR GILL: Correct.

MR. CARROLL: Okay. I mean, you know about a needlestick, don't you?

JUROR GILL: Yes, sir.

MR. CARROLL: And you know what happens when a -- when a used shot needle is on the ground, that's a bad deal, isn't it?

JUROR GILL: Bad deal, yes, sir.

MR. CARROLL: Now, you have something to do with linen service?

JUROR GILL: Yes, sir.

MR. CARROLL: What do you reckon would happen if a contaminated, unguarded shot needle ended up in a trash bag?

JUROR GILL: There's a possibility for someone to get stuck.

MR. CARROLL: Some poor person picking up the trash bag?

JUROR GILL: Uh-huh. Yes, sir.

MR. CARROLL: Have you seen unguarded needles?

JUROR GILL: Yes, sir, all the time.

MR. CARROLL: Is that a problem?

JUROR GILL: Yes, sir.

MR. CARROLL: Let me ask you this: Have you ever heard or seen about this retractable technology?

JUROR GILL: No, sir. I have seen different needles in the hospital but not the type that you-all are describing today.

MR. CARROLL: Okay. Let me ask you a question. Judge Folsom told you a little bit about the burden of proof. That's a legal term. In my words, it means how hard do you have to dig to make sure you're getting to the truth.

JUROR GILL: Uh-huh.

MR. CARROLL: Does that make sense?

JUROR GILL: Yes, sir.

MR. CARROLL: Are you a football fan?

JUROR GILL: Yes, sir.

MR. CARROLL: Who's your favorite team besides the Marshall Mavericks?

JUROR GILL: I really don't have one. I

like them all.

MR. CARROLL: Well, when you get past the 50-yard line, you're in the other team's area, correct?

JUROR GILL: Yes, sir.

MR. CARROLL: I think what Judge Folsom will tell you is that for you to be satisfied that we have told you the truth on infringement -- that is, they're trespassing on our property -- we've got to get the ball over the 50 into Mr. Beck's side of the field.

That's all we've got to do, is get the ball across the 50. So you have to be pretty sure we're right.

JUROR GILL: Yes, sir.

MR. CARROLL: But -- and here's the but.

Mr. Beck's trying to take our property away from us. He says our patent's no good. He wants to invalidate our patent.

The law says that our patent, because it came out of the Patent Office, from the Constitution of the United States, is preserved on -- presumed to be good.

JUROR GILL: Uh-huh.

MR. CARROLL: And in order to bust our patent, like Mr. Beck wants to do, he's got to get the ball down into the red zone, a lot further. You have to be pretty durn sure that he's right before you go with him.

JUROR GILL: Uh-huh.

MR. CARROLL: Now, that means that he's got to work harder to prove to you that he's got the truth on his side about busting our property than we have to work to prove to you that he knocked it off. But that's the law.

Are you able to make him work harder than we work because that's what the law says?

JUROR GILL: No, sir. I feel that everybody should have an opportunity to express themselves and be able to, you know, prove their case, you know.

MR. CARROLL: Okay. I obviously confused it where it didn't need to be confused, Ms. Gill.

JUROR GILL: Uh-huh.

MR. CARROLL: Here's all I'm saying: The Judge is going to tell you that Mr. Beck, if he really wants to go after our property, has to carry his day by something called clear and convincing evidence.

JUROR GILL: Uh-huh.

MR. CARROLL: He's going to tell you that that's more, under the law, than we have to prove to prove that his company has infringed, or taken, without our permission, our property.

Can you follow the law as the Judge gives it to you?

JUROR GILL: Yes, sir.

MR. CARROLL: Okay. That's all I wanted to know.

How long have you been in the hospital business?

JUROR GILL: Twenty-eight years.

MR. CARROLL: And you've given shots, I think, from looking at the questionnaire.

JUROR GILL: No, sir.

MR. CARROLL: You have not, but you've been around needles?

JUROR GILL: Yes, sir.

MR. CARROLL: Thank you, ma'am.

JUROR GILL: You're welcome.

MR. CARROLL: Mr. Newsom, where are you? There you are.

Mr. Newsom, you had a fence line dispute; is that right?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: Does the term trespass mean anything to you?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: Were you the victim of a trespass?

JUROR NEWSOM: No, sir. It's just a division.

MR. CARROLL: Okay. But it turned out there was a fuss over where the lines were?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: Okay. One of the issues typically in a patent case is where the lines are; that is, where -- if you think about a patent, it's like a deed, I think, to a piece of property. And maybe the film said that.

But the patent/deed tells you where the lines of Mr. Shaw's invention is. You understand that?

JUROR NEWSOM: Right.

MR. CARROLL: And one of the things that we say is that our friends over here at B and D crossed that line, that they got on our side of the fence and that they trespassed on our property.

Now, that concept, again, requires us to prove that more likely than not. If we convince you more likely than not that they have trespassed on our side of the fence line, would you be able to follow the Judge's instructions on that?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: Okay. Now, your son's a lawyer up in Gilmer?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: Does he do any of this kind of stuff?

JUROR NEWSOM: No, sir.

MR. CARROLL: He's up there with Todd Tefteller?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: What kind of law does he practice?

JUROR NEWSOM: Well, probate is his specialty and wills and, you know, general practice.

MR. CARROLL: Okay. Now, that fence line dispute that you told us about, did that end up in the courthouse?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: Were you the suer or the suee?

JUROR NEWSOM: Well, I was sued.

MR. CARROLL: You were sued?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: In this case, we're suing B and D. So just like you got sued; they got sued.

Are you going to side with them just

because you're both the suee?

JUROR NEWSOM: Well, I'm going to hear what the Judge charges us with, and then we'll make our decision from that, you know.

MR. CARROLL: Based on the law?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: Based on what you believe?

JUROR NEWSOM: Yes, sir.

MR. CARROLL: That's all we ask for.

JUROR NEWSOM: That's what we will do.

MR. CARROLL: Thank you.

Who has ever written a letter to their local newspaper editor in the letters to the editor column?

Okay.

THE COURT: A response in the jury box, and No. 18, it appears.

MR. CARROLL: Ms. Bayne?

JUROR BAYNE: Yes, sir.

MR. CARROLL: You live near Hallsville?

JUROR BAYNE: Yes, sir.

MR. CARROLL: What were you fussing about?

JUROR BAYNE: I had a friend that was in a collision, and the party that hit my friend, I felt that the paper addressed that incorrectly.

MR. CARROLL: Okay. Is that the only time you've written one?

JUROR BAYNE: Yes, sir.

MR. CARROLL: Make you feel better?

JUROR BAYNE: It did.

MR. CARROLL: Okay.

JUROR BAYNE: Didn't do anything, but it made me feel better.

MR. CARROLL: You wrote it to the Longview paper?

JUROR BAYNE: Correct.

MR. CARROLL: And you are in the business of child education at your church.

JUROR BAYNE: Correct.

MR. CARROLL: You also have an Arbonne business?

JUROR BAYNE: Yes, sir.

MR. CARROLL: You're pretty busy.

JUROR BAYNE: I am.

MR. CARROLL: Are all your kids grown?

JUROR BAYNE: I have a daughter that's a senior and in volleyball playoffs this week.

MR. CARROLL: Well, congratulations.

Hope they win.

JUROR BAYNE: Thank you.

MR. CARROLL: There will be a time in your life, like Mr. Beck and me, where people say are all your kids grown and gone, and you say, well, as of 6:00 o'clock this morning, they were.

Thank you. And good luck with your team.

THE COURT: No. 7, Ms. McGuire.

MR. CARROLL: Ms. McGuire?

Ms. McGuire, what were you stirred up about?

JUROR MCGUIRE: Well, I don't know that it would be stirred up, but I'm very involved in the community where I live, and letters, varying from encouraging people to vote or attention to a particular issue that might be involved. And I can't recall particular topics but more than once.

MR. CARROLL: There to the paper in Pittsburg?

JUROR MCGUIRE: Either to Pittsburg or to the Mt. Pleasant Daily Tribune.

MR. CARROLL: Okay. So you're what I would call a frequent letter writer?

Because I am, and I don't think there's anything wrong with us.

JUROR MCGUIRE: Not frequent, not like

once a year, but several times I have, yes, sir.

MR. CARROLL: Okay. Thank you, ma'am.

Anybody else?

Mr. McCormack?

JUROR MCCORMACK: Yes, sir.

MR. CARROLL: You live near Leesburg.

That's in Camp County.

JUROR MCCORMACK: Yes, sir. Newsome, it's even further west.

MR. CARROLL: Okay. And what did you write about?

JUROR MCCORMACK: I was at the time residing in the City of Mesquite, and Danny Faulkner was trying to build condos from Lake Ray Hubbard to my neighborhood. And I started a Neighborhood Watch Association.

MR. CARROLL: And the rest is history.

JUROR MCCORMACK: Sir?

MR. CARROLL: And the rest is history?

JUROR MCCORMACK: Yes, sir.

MR. CARROLL: Danny goes to jail.

JUROR MCCORMACK: Prison.

MR. CARROLL: Well, congratulations.

JUROR MCCORMACK: Thank you.

MR. CARROLL: Let me ask you this real

quick: Do you ranch? Do you make --

JUROR MCCORMACK: Yes, sir.

MR. CARROLL: Do you try to make your living from ranching and farming?

JUROR MCCORMACK: Not really.

MR. CARROLL: Okay. What do you grow?

JUROR MCCORMACK: Well, I've got hay and cattle.

MR. CARROLL: Okay. Well, I hope the rain helped.

JUROR MCCORMACK: Oh, we got plenty of that.

MR. CARROLL: Well, good.

THE COURT: Do we have another response in the audience? I thought I saw someone speak up.

MR. CARROLL: Yes. No. 32 and No. 24, Your Honor.

Ms. Shipp?

JUROR SHIPP: Yes. I have just written to my local paper just a time or two on encouragement for our children -- I teach in school -- and some great things that had happened.

And we're involved with the Upshur County at the time where any children showed, you know, thanking them for letting -- hosting heifers for the

Yamboree at the time. And that was a big thing, because they didn't want them in. So we got it in.

And I just wrote to them and told them thank you for the encouragement and helping my child put money in his bank account for college.

MR. CARROLL: Good for him. Thank you, ma'am.

Ms. Bledsoe?

JUROR BLEDSOE: A few years back, Linden was trying to establish a hospital district, and I was opposed to it and wrote several letters to the local paper.

MR. CARROLL: Did it help?

JUROR BLEDSOE: Yes, it did. We defeated it 2 to 1.

MR. CARROLL: Well, congratulations. Thank you, ma'am.

THE COURT: Anyone else?

Mr. Carroll, your time is concluded, other than any follow-up responses on this question.

MR. CARROLL: Okay. Thank you, Your Honor.

Thank you, Ladies and Gentlemen.

THE COURT: Mr. Beck.

MR. BECK: Thank you, Your Honor. May it

please the Court.

My mother was probably one of the biggest letter writers in Port Arthur, Texas, when I grew up, so I really empathize with a lot of you who have written letters, because she was doing it like every week.

Let me ask you-all some very general questions. On the questionnaire that many of you filled out, as you know, there was question about corporations and what you think about corporations.

The Judge is going to instruct you, in all likelihood at the end of this case, that those of you who are selected as jurors must base your decision on the law as the Judge instructs you and on the evidence.

What I need to know is whether there's anybody who somehow is going to say or conclude that because Becton Dickinson is a larger company than RTI -- it's been in existence, as I said, since 1897 -- that somehow we should lose?

In other words, you've got a relatively small company on one side; you've got Becton Dickinson on the other, which is a large company.

Is there anybody here who's going to decide: Now, wait a minute. I don't know who to believe in this case; I'm just going to go with the small company?

Because if that's the case, we don't even need a trial.

So I ask all of you collectively: Is there anybody here who believes that; that simply because one party is smaller than the other -- both are corporations -- one party is a smaller company than the other, that the smaller company ought to win?

Anybody who believes that, please raise your hand.

All right. I don't see any raise of hands.

Is there anybody who believes that simply because one company is smaller than the other that you must necessarily lean to the other side? Kind of like a David and Goliath situation.

Because this is a lawsuit that's important to both sides, and so it's important that the jurors that we select decide this case solely on the law and the facts.

Is there anybody who's going to lean towards RTI in this case, the Plaintiff, simply because they are smaller than Becton Dickinson? If so, please raise your hand.

All right. I don't see any raise of

hands.

I want to ask everybody here: Is there anybody here that believes in innovation? Please raise your hand, if you believe in innovation.

All right. I see most people have raised your hands.

Our position in this lawsuit is essentially going to be that things can be improved, but they can be improved in different ways. And innovation, our position is, is at the core of this lawsuit.

What I need -- and if we go down to a store, we see different kinds of aspirin, different kinds of shampoos. And we're talking here about choice. We're talking about people who use these products have a choice based upon cost, based upon need, based upon quality, based upon preference.

Is there anybody here who believes that simply because these products are both retractable syringe devices that somehow there's got to be infringement somewhere because they're both retractable syringe devices?

Is there anybody here who believes that?

If so, please raise your hand.

Again, I don't see any raise of hands.

Is there anybody here who can't listen to the evidence, make a determination of, all right, we've got two retractable syringes here; they have different features; and we'll look at that evidence and we'll make a determination of whether or not one technology overlaps the other? Is there anybody here who cannot do that?

Again, I don't see any raise of hands.

I know one of you was asked about burden of proof. Now, the Judge is going to tell you-all who has the burden of proof on what issues. And it's a little bit -- it's different depending upon what the issue is.

But is there anybody here that does not understand that when a Plaintiff brings a lawsuit, they have the absolute right to do that in this country?

This is a democratic country, and if somebody feels they're aggrieved, they've got a right to come in this courthouse and file a lawsuit. But they've got to prove the charges and allegations that they make. And the Judge, with respect to whether or not we infringe the patent, we believe will tell you that the Plaintiff has to prove by a preponderance of the evidence. Credible is who you believe. Concrete evidence, specific evidence.

Is there anybody here that cannot follow

Judge Folsom's instruction on who has the burden of proof, the Plaintiff in this case, by a preponderance of the evidence insofar as whether or not our client has infringed any of their patents?

I take it by your silence that you can do that.

Is there anybody here, Ladies and Gentlemen, who believes that simply because two different companies at two different times came up with two technologies in the same area, namely, a retractable syringe device, that somehow there's got to be some kind of infringement here; there's just got to be?

Is there anybody that believes that at all?

Because if you believe that, we need -- I need you to raise your hand so we can talk to you a little bit about it and make sure that because of some experience or belief that you may have had, because of -- again, some experience you may have had, that somehow maybe you're not the best juror in this kind of a case.

For example, because my grandkids -- I've got four of the best-looking grandkids you've ever seen. I know you all dispute me on that. But I could not be a juror in a child molestation case for that reason. I just -- I'm not -- I can't be a juror in that case. I -- I couldn't be fair to the defendant in that case. And that's all we're really trying to do is to find out if there's some experience you-all have had that somehow makes you maybe not the best juror in this case but really a good juror perhaps in another case.

JUROR RINIER: I have a question.

MR. BECK: Yes, sir?

THE COURT: If you'll please stand, sir. Raise your number, please.

JUROR RINIER: I'm sorry. 31.

In response to your premises, my question is, did both sides have a valid --

MR. BECK: Patent?

JUROR RINIER: -- patent on it? Did both sides have a patent? That's my question.

MR. BECK: Well, those are the kinds -- that's the kind of evidence we're going to be getting into, and I can't really very well tell you what the evidence is going to be, because we have certain rules we've got to play by.

But that's going to -- we're going to be getting involved in that kind of evidence during the trial. And I will tell you our position is that our technology -- we believe the evidence will show that our technology was purchased from another company in 1999. We believe that's what the evidence will show.

All right. Let me ask you some specific questions here.

Mr. Rogers, if I could ask you -- you told me about the owner having some type of patents. Do you know generally what type of patents they are?

That's No. 14.

JUROR ROGERS: I believe they were patents on improving extrusion dies for the plastics industry, feed blocks and extrusion dies.

MR. BECK: Okay. And were you ever a witness in the case, or were you involved in somehow helping to support any litigation he may have been involved in?

JUROR ROGERS: No, sir.

MR. BECK: Do you know whether or not -- and don't go into the specifics -- but do you know whether or not he was -- if that litigation was resolved to his satisfaction?

JUROR ROGERS: I do not know.

MR. BECK: Okay. And is there anything from that experience that you think might cause you to maybe lean towards RTI's side of the case simply because they think that somehow we're infringing their patent, and your owner thought that maybe his patents were being infringed?

JUROR ROGERS: No, sir. That wouldn't be a problem.

MR. BECK: Different situations and --

JUROR ROGERS: Totally different.

MR. BECK: -- and facts.

JUROR ROGERS: Yes, sir.

MR. BECK: Thank you very much.

Ms. Campbell, you've answered all my questions already. Thank you, ma'am.

Mr. McCormack, there was a question that was asked on the questionnaire that you did not fill out. And the question was: Is it okay to copy someone else's idea or products if you make some changes to it?

Could you tell me your general views on that, if you would, please?

JUROR MCCORMACK: Well, I really didn't have a view on it, because, you know, I don't have any specifics. That's the reason why I didn't answer it.

MR. BECK: That's all I needed. Thank you, sir.

Ms. Fisher, on one of the questions on the questionnaire, you were asked if you felt qualified to invalidate a patent that's been granted by the Patent

Office.

And there are several patents that are going to be involved in this case. And we are alleging that two -- every patent has a number of claims, which the Judge will instruct you about. And our position is that two of the claims on one patent, not all the patents, but one patent are invalid.

Now, you heard the video that the Court showed you. And if you're chosen as a juror, you're going to be asked to determine whether or not these two claims are invalid.

So my question to you is, even though you may not feel qualified to invalidate, can you do that?

JUROR FISHER: I think as long as I'm given the instruction. I need to understand the terminology and the law that we are -- that's being addressed. The video was helpful.

THE COURT: I'm going to do my best to explain the law in that area.

JUROR FISHER: I think as long as I have the right information to make a decision, I'm comfortable making a decision.

MR. BECK: Okay. Then one other question here. It said: What are your impressions of big corporations in the U.S. today, and you wrote a necessary evil.

You understand why that makes me a little bit nervous in this case. Could you talk to me a little bit about that, please? Could you tell me a little bit more about it?

JUROR FISHER: I can tell you that when I was filling out that questionnaire, it was really late at night after a long day at work. And also, I was thinking of our banking industry at the same time.

MR. BECK: Thinking about what?

JUROR FISHER: Our banking system and the situation that our country is in. So that's probably what colored my comment.

I can't really be too critical of large business over small business, because on a certain playing field for the company that I work for, we are a big fish. And so -- I mean, in our -- in our area, we serve, you know, right now probably a home census of about 311 patients as opposed to some of our competitors in the area who may serve 20 to 50.

So I think I could be objective either way on that type of thing.

MR. BECK: That's all we need to know.

Thank you, ma'am.

Mr. George, just a quick question. I

know when you were asked your impression, you said they're overpaid. With all the headlines I think we've been seeing for the last year, I think most people agree with you.

My question is real simple. We've got a dispute here. It's about patents. It's not going to be about, you know, who's making what money in terms of executives, and that's not the area of the dispute. The dispute is about infringement and possible validity of two claims.

Can you just listen to the evidence and call them as you see them?

JUROR GEORGE: Yes, sir.

MR. BECK: Thank you. That's all I need to know.

Ms. Brown, there was a question that you left blank, and it was the last one, which was kind of a catch-all, which was: Is there any reason you can think of why you would not be a fair and impartial juror in this case?

Is that something you forgot to add, or is there something you'd like to tell us about that?

JUROR BROWN: No.

MR. BECK: Is there any reason you know of why you could not be a fair and impartial juror?

JUROR BROWN: No.

MR. BECK: Thank you, ma'am.

Mr. Hatten, on your questionnaire, you talked about how big corporations are great if they are run correctly.

Could you tell me a little bit about what your intent was there?

JUROR HATTEN: I guess basically -- I'm trying to think why I said that.

MR. BECK: Some are good; some are bad. Is that --

JUROR HATTEN: Well, I guess -- I guess -- when I -- when I made that -- made that statement, you know, you have -- I work for U.S. Steel.

MR. BECK: That's good.

JUROR HATTEN: And I've worked for Lone Star Steel. What I mean by that, basically, is ran correctly is -- in other words, people doing the right thing on the job or for the company aspect --

MR. BECK: Not trying to put stuff in their own pockets?

JUROR HATTEN: Right. That's basically what I said.

MR. BECK: I think I understand. Thank you very much.

Ms. Doty, one question. When you talked about the impressions of big corporation, you said they don't care for the little man.

Can you tell me what you mean by that, please?

JUROR DOTY: That's true. They don't.

MR. BECK: Is there anybody here that doesn't believe that?

You heard what I asked earlier about, you know, we're bigger than they are. We started out in 1897 and grew to be pretty large. He keeps changing it. They are not as big as we are obviously.

And is your view that you've expressed on here going to in any way color your decision that you're going to be making at the end of this case?

JUROR DOTY: No. I would like to add that I wish the retractable needle would have been in business in like 1970. I had a shot in my mouth. It affected my eye, and I'm losing the sight in that eye then -- now.

MR. BECK: Was this at the dentist's office?

JUROR DOTY: Uh-huh. Just a plain, ordinary, old-timey needle that had a bacterial germ on it.

MR. BECK: I'm sorry to hear that. I wish retractables had been around then.

JUROR DOTY: But I -- no, that wouldn't have any effect on my decision.

MR. BECK: Okay. Thank you, ma'am.

Ms. Gill, just a quick question. I noticed that you said that everybody needs a watchdog over them. And you mentioned the Maddoff situation, which I'm sure everybody would agree with.

Again, can you listen to the evidence in this case and just base your decision on what you believe is right and fair under the circumstances?

JUROR GILL: Yes, sir.

MR. BECK: Thank you, ma'am.

Ms. Johnson, just a quick question. You talked about your impression of big corporations, and you said not real good.

JUROR E. JOHNSON: That's right.

MR. BECK: Obviously that got my attention because we're relatively, compared -- certainly compared to RTI, we're a big corporation. And what I need to find out is your general impression, which is not real good, of big corporations.

Is it in any going to color your view of the evidence in this case? In other words, are you going to look at the evidence and just say: Now, wait a minute. This is coming from RTI, and I don't think a whole lot of big corporations, and, therefore, I'm going to believe RTI's side of the case as opposed to Becton Dickinson?

JUROR E. JOHNSON: No. I don't think so at all. I mean, my deal with big corporations is, I remember back in an era when I grew up when you went to work for a company, you stayed with that company; the company took care of you.

Today it seems like the companies are more interested in taking care of the big guy up at the top than the little guy that's doing all the work.

MR. BECK: I got you. I got you.

JUROR E. JOHNSON: And I don't think one has anything to do with the other.

MR. BECK: Thank you. That's what I needed to know.

Just another quick question from Ms. Stacy. Same question having to do with corporations. You say that they place importance on profits not on job creation and job stability.

Again, that got my attention, because obviously I'm representing a company who believes they're right in this case. And if you're going to be a juror, I need to know whether or not your general impression is in any way going to color your view of the evidence in this case.

JUROR STACY: I don't think so.

MR. BECK: Okay. You think you can listen to the evidence, and if you believe that our client is introducing information and evidence that is accurate and truthful, you can accept that even though it may be coming from an employee of a big company?

JUROR STACY: Yes.

MR. BECK: As you know, I think, companies are made up of employees, right?

JUROR STACY: Right.

MR. BECK: And you can listen to the evidence of our employees, just as from the Plaintiff's employees, and then base your decision on that evidence?

JUROR STACY: Yes.

MR. BECK: Thank you, ma'am.

Mr. Kipp, one of the questions you had on the questionnaire, you said that when you worked at GM, you mean General Motors, I take it?

JUROR KIPP: Yes.

MR. BECK: Where did you work for General Motors?

JUROR KIPP: I'm sorry?

MR. BECK: Where did you work for them?

JUROR KIPP: Both in New York state and over in Shreveport, Louisiana.

MR. BECK: Okay. It says that you and a co-worker suggested a way to save GM money.

JUROR KIPP: Yes, we did.

MR. BECK: And what was the nature of your suggestion just generally?

JUROR KIPP: It was what they had -- I can say it real fast. It was a seat cover -- a seat track cover. That's the thing that makes the seat go back and forth. And for the different models, they had different colors. And we just said make them all the same color, because there was probably 40 different parts. And for every part they could eliminate, it was a lot of money.

Well, with that suggestion, we saved them probably millions of dollars at the time, because it was -- anyway, we got scolded for making a styling suggestion. So ever since that, I kind of had a little bit of a bad attitude. And that's all.

MR. BECK: So I take it you-all didn't get credit for the suggestion you made?

JUROR KIPP: We did not get credit. We got -- we sort of got punished. They said don't do this anymore. Then they did it anyway.

MR. BECK: So somebody else took credit?

JUROR KIPP: Yes, they did.

MR. BECK: Okay. Now, what I need to ask you is whether or not that is -- how long ago was that?

JUROR KIPP: That was in 1985.

MR. BECK: Okay. I need to ask you whether that experience is in any way going to color your thinking or your review of the evidence in the case?

Because, obviously, the Plaintiffs are arguing in this case that they came up with some kind of an idea which was new and different and revolutionary, and somehow we took it. We dispute that. We're going to show what our technology is.

But I need to know whether or not your experience is going to affect you at all.

JUROR KIPP: Once I hear it, I would have to make my decision based on what I hear.

MR. BECK: Okay. That's all we can ask.

Thank you, sir.

Mr. Crosse?

JUROR CROSSE: Yes.

MR. BECK: Just a quick question, sir. There was a question on the resume (sic) about your impression of big companies, and it was left blank.

Is there anything you can share with us about your views?

JUROR CROSSE: I've never had anything to do with big companies.

MR. BECK: Okay.

JUROR CROSSE: Except for the Army, and that's not a company.

MR. BECK: It doesn't get much bigger than that. I know my son is in the Marine Corps. He probably has so many bosses, he doesn't know what to do.

JUROR CROSSE: Four tours of Vietnam.

MR. BECK: What's that?

JUROR CROSSE: They sent me on four tours of Vietnam.

MR. BECK: Is that right? I had two brothers in Vietnam. They were there for 13 months, too.

JUROR CROSSE: So it makes an impression.

MR. BECK: When were you in Vietnam?

JUROR CROSSE: First time was 1961, '64, '67, and '71.

MR. BECK: And which branch were you in?

JUROR CROSSE: Army, aviation.

MR. BECK: Okay. Thank you very much.

Or thank you for your service.

JUROR CROSSE: Thank you.

THE COURT: Mr. Beck, I am told your time is up.

MR. BECK: All right. Thank you, Your Honor.

THE COURT: Thank you.

Ladies and Gentlemen, I appreciate your patience. There's one matter I need to take up with Mr. Beck and Mr. Carroll at the bench, and then we'll talk about our schedule and see if it causes anyone a hardship.

(Bench conference.)

THE COURT: Anyone y'all are going to request to be excused for cause based on the questionnaires or anything you've heard here today?

MR. BECK: There is nothing I heard in the courtroom this morning, but there are a couple --

THE COURT: Because I haven't looked at these questionnaires nearly as close as the two of you.

MR. BECK: If I can check with my people. I think there were a couple that we may want to raise a question, but we're not talking about a big number.

THE COURT: I want to take care of those before I take care of the hardships. So why don't you confer.

Mr. Carroll, you don't have any?

MR. CARROLL: No, sir.

THE COURT: Why don't you remain right here, and then Mr. Beck will...

MR. BECK: Okay.

(Pause in bench conference.)

THE COURT: No?

MR. BECK: No, sir.

THE COURT: Very well. Thank you.

(Bench conference concluded.)

MR. CARROLL: May I be excused?

THE COURT: Mr. Beck, that's a no?

MR. BECK: That is a no, yes, sir.

THE COURT: Ladies and Gentlemen of the Jury, let me give you an outline of the schedule of the trial of this case. Then I'll take up any hardship excuses.

It's a little unusual for me, one, to be selecting a jury on Friday, but between my schedule and the schedule of the lawyers and the witnesses, this is the day we all could meet for this purpose.

So we're going to select this jury and seat this jury. Then Judge Everingham will come in and select a jury, and that's probably going to take until, you know 1:00, 1:30, somewhere in that neighborhood, depending upon how long his process takes.

Then we're going to actually have opening statements in this case this afternoon.

I know this is Friday, and a lot of you have probably planned maybe a trip to a volleyball game or a football game or whatever. We're going to try to break early today. I don't know exactly when early is but, hopefully, 3:30, 4:00 o'clock is the latest, depending upon when we can start our opening statements.

But my normal routine, as these lawyers that have been in my Court, know that my cardinal rule is you're here to give us your time. We're not going to waste it. So I start promptly each morning at 9:00 o'clock, because I know some of you have a rather lengthy drive. And I have a 75-mile drive, and my staff each day. So I can sympathize with you.

I try to be here about 8:30 to take up any issues with the lawyers to make sure this case moves along smoothly as possible.

We'll take -- we will start promptly at 9:00. We'll take a break each morning from about 10:30 to 10:45, 10:50. Then we will take a lunch break from about generally 12:00 to 1:30. And that's a little longer than you are probably used to at work, but here's the reason for that.

Generally, at 12:00 o'clock, when I recess and I meet with the lawyers and we take up any issues that need to be addressed, and we might be here 30 minutes or so. And I don't know about the lawyers. I like to have a little lunch occasionally.

So we'll try to take about an hour and a half break. Then we'll take a break from 3:30, 3:45, 3:50. Then I try to let you go home pretty promptly at 5:00 o'clock, because some of you have a long drive, and you have matters to take care of at home.

And likewise, I have a drive. And I meet with the lawyers after 5:00 o'clock, and we talk about issues that try -- we try to streamline this case and not waste your time.

Now try as we might, occasionally issues arise that will probably require you to go to the jury room while we work on it. But let me assure you, it's an absolute necessity when we -- when we do that. But that's sort of a normal trial day.

Now, I -- I have put the lawyers on the clock, just like in the jury selection. They have a certain amount of time to try this case. So if they're asking the same question four, five, or six different ways -- and that's one of my most common complaints, when I talk to jurors, about lawyers asking the same question over and over and maybe in a slightly different fashion.

We have very good lawyers, and I'm confident they won't do that. But if they are, they're using their time.

With all that said, we hope to finish this case a week from today, next Friday. If we have some problems, it might run over until Monday the 8th. Is that -- of November.

COURTROOM DEPUTY: The 9th.

THE COURT: The 9th of November. So that's basically our schedule.

We don't want to cause anyone a hardship. And let me give you some common examples of hardship. You know, maybe your employment simply cannot go on without you. You're a one-person office, or simply if you're not a one-person office, you're a supervisor, and absolutely you can't miss that much work.

Or maybe you have a long schedule, prepaid trip for next week. We're sure not going to interfere with that. Or you have someone having surgery, a family member, or maybe a long-scheduled doctor's appointment that it would take you three or four months to reschedule it. None of us want to cause a hardship.

I know it's going -- it's going to inconvenience all of us to be here for the next week. So I'm looking for sure-enough hardship issues. And those are some examples. There are many others. I've had everything in the last 15 years you could imagine: Marriages scheduled, honeymoons, and so on and so forth. So that will give you a chance to tell me if this creates a hardship.

I want you to go through a little mental exercise for me first. I want you to assume you're going to turn to the person on your right and the person on your left and convince them that their -- your hardship is such they should serve rather than you. So oftentimes, that will sort of cut down this process. And likewise, I don't want you to know what works and what doesn't work. So we'll let you approach the bench with Mr. Carroll and Mr. Beck to take up your hardships.

If you're selected -- we're going to use a ten-person jury. And the rules in place in our district on a civil case, we can use as few as six and as many as twelve. I've selected we're going to use a ten-person jury. No one's an alternate. All ten people will arrive at the verdict, if you're not dismissed for some reason.

So when you look around and see if you're selected and there's only ten people, that's the reason. With that, does this create a hardship for anyone on Row 1?

We'll start with No. 3, Ms. Fisher. If you will come around.

Mr. Beck, Mr. Carroll, you're certainly entitled to be present.

If you'll come around, please.

(Bench conference.)

THE COURT: Tell us your circumstances.

JUROR FISHER: It's work-related, and I probably could discuss it with my supervisor today. It puts the rest of the office staff that are responsible for triaging phone calls from patients under a lot of heavier workload.

THE COURT: Right.

JUROR FISHER: You know, we get a lot of phone calls each day to troubleshoot patient problems over the phone.

THE COURT: You're with hospice, correct?

JUROR FISHER: Yes, sir. Yes, sir. If it were a day or two, it would be one thing, but the thought of a whole week, I should probably...

THE COURT: Well, what are your thoughts?

I know both -- everyone would love to have you serve, but you're best-suited to determine what type of hardship that would create.

JUROR FISHER: The fact that it's a whole week makes it very difficult. I think it would create a hardship on my other co-workers.

THE COURT: Yeah. Well, would you like to call your supervisor while we're taking these up and then report?

JUROR FISHER: I could do that.

THE COURT: If they say that's not a problem, then great.

JUROR FISHER: I could do that.

THE COURT: On a personal note, I have a good friend from high school that -- and this is up in Southwest Arkansas, best friend -- that's dying of a brain tumor. I just can't tell you what great work hospice in that area does and what a wonderful service it is.

JUROR FISHER: Thank you. We love what we do, so...

THE COURT: Yeah, I understand.

Why don't you go call, and then we'll let you report back.

Gentlemen, y'all have any particular

preference on whether --

MR. CARROLL: We don't have any objection to excusing her.

THE COURT: Mr. Beck?

MR. BECK: I would like to hear back from her supervisor.

THE COURT: Okay. I thought one side or the other might not like that.

(Bench conference concluded.)

THE COURT: Mr. George?

(Bench conference.)

THE COURT: We will see what her supervisor says.

Yes, Mr. George.

JUROR GEORGE: I claim my exemption as a volunteer fireman.

THE COURT: Okay. Is that -- I don't know.

COURTROOM DEPUTY: That's not one.

THE COURT: I think that's a -- at the state level, unfortunately, but do you think you've -- we don't recognize the exemption, but do you need -- would it be difficult serving?

JUROR GEORGE: That, and on my job, I'm the only one there certified to do CPR and first aid for

400 people.

THE COURT: Well, I think that's certainly a -- and I'm sorry we don't recognize the volunteer, but we'll excuse you. If you're the only person that can provide first aid, you need to be there.

JUROR GEORGE: Yes, sir.

THE COURT: If you'll be patient with us, we'll probably have everyone out of here before noon.

JUROR GEORGE: Okay. I just go back over there?

THE COURT: Yes. Please.

(Bench conference concluded.)

THE COURT: Anyone else in the jury -- yes, sir, come around, please.

(Bench conference.)

THE COURT: Yes, Mr. Hatten?

JUROR HATTEN: Yes. I also am a grower for Pilgrim Price.

THE COURT: Excuse me?

JUROR HATTEN: I'm a grower, and I'm getting my birds in Tuesday.

THE COURT: You're --

JUROR HATTEN: I'm getting my birds in Tuesday, and I have to finish preparing everything for that.

THE COURT: That would create quite a problem if you were --

JUROR HATTEN: Yes. I mean, because I have to be there when they bring them.

THE COURT: Okay. I think under those circumstances, we will excuse you and hope you can get all your work done.

If you will just be patient and stay with us until we finish.

JUROR HATTEN: That's not a problem today, but I know Monday and Tuesday, I have to finish up.

THE COURT: Problem?

JUROR HATTEN: I have to finish everything up.

MR. BECK: Rain going to be a problem?

JUROR HATTEN: No, it won't be a problem. I'm going to be on the inside. I'm going to do what I got to do.

THE COURT: Thank you.

(Bench conference concluded.)

THE COURT: Anyone else in the jury box?

Yes, sir. We'll start with No. 14, Mr. Rogers.

(Bench conference.)

THE COURT: Yes, Mr. Rogers?

JUROR ROGERS: Yes, sir. I'm a plant supervisor, and currently, I'm doing all the duties there. We've recently had a layoff. I'm a secretary, programmer, I mean, everything.

THE COURT: How many employees are at your plant?

JUROR ROGERS: I have 15 right now.

THE COURT: So it would be quite a problem for you to be away?

JUROR ROGERS: Yes, sir. I have 15 during the day and 7 at night.

THE COURT: I'll excuse you under those circumstances.

JUROR ROGERS: Okay.

THE COURT: If you'll remain with us, we should have everyone out of here, hopefully, in the next 30 minutes or so.

JUROR ROGERS: Thank you.

(Bench conference concluded.)

THE COURT: Anyone else?

No. 12.

(Bench conference.)

THE COURT: Yes, sir, Mr. Peace?

JUROR PEACE: I am self-employed,

financial adviser, commission-based only, so if I'm not working, I'm not making any money.

THE COURT: Okay. Well, so that might create a financial hardship.

JUROR PEACE: It would.

THE COURT: Well, we don't want that.

And you know Mr. Mercy and Mr. Tidwell; is that correct?

JUROR PEACE: I do.

THE COURT: You wouldn't hold that against --

JUROR PEACE: Coach both their kids.

THE COURT: You wouldn't hold that against Mr. Carter, would you?

JUROR PEACE: No, I wouldn't.

THE COURT: Very well. We understand. You don't think that $40 a day would --

JUROR PEACE: I don't know that my wife could make it on that.

THE COURT: Thank you. If you'll be patient, we'll have everyone out of here.

JUROR PEACE: All right, sir.

(Bench conference concluded.)

THE COURT: Anyone else in the jury box?

In the audience?

First row, No. 18.

(Bench conference.)

MR. BECK: Judge, did you strike him?

THE COURT: Yes. No. 14 -- I mean, 12. Excuse me.

MR. BECK: 12.

THE COURT: Yes, ma'am?

JUROR BAYNE: I know it sounds trivial to you --

THE COURT: Well, I'm sure it's not.

JUROR BAYNE: But, all next week, we have playoffs and I don't know if they're going to be in the Dallas area or what. And so if I'm here until 5:00, I may not make it.

THE COURT: That's not trivial, let me assure you. I was an old volleyball player way before volleyball was --

MR. CARROLL: Cool.

THE COURT: Was cool, yeah.

JUROR BAYNE: It's her senior year, and I'm not willing to miss that.

THE COURT: You'd be mad at all of us if you had to miss. I hope she does well.

Where does she play?

JUROR BAYNE: Thank you. Hallsville.

THE COURT: Hallsville. Hope they do well.

JUROR BAYNE: Thank you.

THE COURT: If you'll be patient and stay with us until we release everyone.

JUROR BAYNE: Just go back and sit down?

THE COURT: Yes.

(Bench conference concluded.)

THE COURT: Anyone else in the audience?

(Bench conference.)

THE COURT: I'M trying to decide how far we're actually going to reach.

MR. CARROLL: 29, I believe, Judge.

MR. BECK: 25, too.

THE COURT: We'll go ahead and go through them. That way I won't be charged if they're excused for cause. You know they take out of my salary if I waste someone, and it's small enough as it is.

MR. BECK: You're the chief.

(Bench conference concluded.)

THE COURT: No. 25, I believe.

(Bench conference.)

THE COURT: Yes, ma'am. Whitlock; is that correct?

JUROR WHITLOCK: Yes. I don't drive and

it makes a hardship, because my husband can't work when I --

THE COURT: Okay. So it doesn't -- it would keep him away from work?

JUROR WHITLOCK: Yes, keep him away from work. I'm a housewife. We'd keep him away from work.

THE COURT: Well, that could create quite a burden on --

JUROR WHITLOCK: Yes, and our finances.

THE COURT: I understand. We're not going to cause that hardship, so I assume you don't have anyone you could -- of course, we don't know who's going to be on the jury.

You know anyone here that's on the panel today that you could --

JUROR WHITLOCK: No.

THE COURT: We wouldn't know if you were going to end up being on the panel with them.

JUROR WHITLOCK: No, I don't know --

THE COURT: So we'll excuse you. If you'll be patient, we'll all be out of here before noon.

JUROR WHITLOCK: Okay.

THE COURT: Thank you.

MR. BECK: Thank you, ma'am.

(Bench conference concluded).

THE COURT: Next number?

27.

(Bench conference.)

THE COURT: Yes, sir?

JUROR BOUKNIGHT: I'm one of two mechanics in the school district and a sub bus driver also at Gilmer school. A week would be a little --

THE COURT: A little much?

JUROR BOUKNIGHT: Yeah, a little much for them.

THE COURT: Under those circumstances, we want to keep those buses running.

JUROR BOUKNIGHT: Yes, sir. We got to keep them rolling to get those little darlings to school.

THE COURT: I was a bus driver for a year.

JUROR BOUKNIGHT: I've been doing it 17 years. Thank you.

THE COURT: Thank you, sir.

(Bench conference concluded.)

THE COURT: 22.

(Bench conference.)

THE COURT: Got another bus driver.

MR. BECK: Did you really drive a bus?

THE COURT: Uh-huh. I taught two years.

MR. BECK: Arkansas?

THE COURT: Arkansas High and the first -- I'll show you how old I am. My first contract was 4600. The second year I drove a bus, and it was 125 a month. So I was in big money then.

Yes, ma'am?

JUROR WILKERSON: I am a bus driver. I don't think I could take off all that time.

THE COURT: Well, the previous person was a bus driver.

JUROR WILKERSON: And I'm in business, a cleaning business for myself. I clean our church, and I don't know --

THE COURT: You just couldn't --

JUROR WILKERSON: It would be hard on me.

THE COURT: I was just telling the previous juror that I was an old bus driver, so I understand such things.

JUROR WILKERSON: Yes. We have no subs. Nobody wants to drive anymore.

THE COURT: I can't imagine why.

JUROR WILKERSON: Let me tell you.

THE COURT: Well, thank you.

MR. BECK: 29, I believe, Judge.

(Bench conference concluded.)

THE COURT: 29.

(Bench conference.)

THE COURT: I tried to get Heartfield to come up and try this case, and I couldn't rope him in.

MR. BECK: He won't handle a patent case.

THE COURT: He got vaccinated on the first one. He was smarter than I was.

JUROR PRICE: Excuse me.

THE COURT: Good morning, Ms. Price.

JUROR PRICE: Yes, sir. I have an appointment with my daughter who's 14 at the oral surgeon. They made this appointment for us because of a problem that she's having that's got to be taken care of.

THE COURT: And when is that?

JUROR PRICE: It's Monday at 9:30.

THE COURT: Well, we don't want to -- don't want to cause her to miss that. No one else could take her?

JUROR PRICE: No, sir, because it's -- it's my insurance. She's on my insurance. We had to get that date set, the money paid, all of that. And my husband's like I don't know --

THE COURT: Yeah.

JUROR PRICE: So --

THE COURT: You're a claims examiner with Blue Cross.

JUROR PRICE: Yes, sir.

THE COURT: Can I talk to you about a claim while you're up here? No?

I hope all goes well with your daughter.

JUROR PRICE: Thank you. She's scared to death.

MR. CARROLL: Bless her heart.

THE COURT: How old is she?

JUROR PRICE: She is 14; she will be 15 the 14th. And she's got a wisdom tooth coming in on a nerve.

MR. CARROLL: Ow.

JUROR PRICE: And if we don't get it taken care of quick, she's going to have problems.

THE COURT: We all hope that goes well.

If you'll be patient, we'll have you out of here before noon.

JUROR PRICE: Thank you, sir. Thank y'all.

MR. BECK: Good luck.

(Bench conference concluded.)

THE COURT: Ms. Fisher, if you will come

back, please.

(Bench conference.)

THE COURT: Got a report for us?

JUROR FISHER: She said if I get picked, that's okay. She will make it work.

THE COURT: Great. Tell her that we appreciate it. Thank you.

MR. BECK: Thank you very much.

THE COURT: There's a strike.

MR. CARROLL: You're right.

(Bench conference concluded.)

THE COURT: We were down No. 27 and 29. What's the next number after 29?

MR. BECK: 33.

MR. CARROLL: 33.

THE COURT: 33, please.

(Bench conference.)

THE COURT: That way I won't be charged with it. I'm going to be quick to excuse him because we're not going to reach him.

Yes, sir?

JUROR STICKLE: Yes, sir. I'm a high school CTE teacher, building trade and so forth, plus I'm a bus driver.

THE COURT: We have had all the bus

drivers today.

JUROR STICKLE: And that would be quite an inconvenience for me as well as my district.

THE COURT: We're going to excuse you. I was -- I've told the two other bus drivers that I drove a bus for a year, so I understand those problems.

JUROR STICKLE: Well --

THE COURT: Are you driving some of the team up to Texas High tonight?

JUROR STICKLE: No. I get enough of it with a 27-and-a-half-mile trip, round trip, a day, morning and evening.

THE COURT: I understand. Who's going to win that game tonight? Hallsville, Texas?

JUROR STICKLE: I'm going to throw that one up in the air.

THE COURT: Thank you.

JUROR STICKLE: Thank you.

(Bench conference concluded.)

THE COURT: I think that -- is that everyone?

34.

(Bench conference.)

THE COURT: She's going to be quick to receive an excuse, because we're not going to reach her.

JUROR A. JOHNSON: Y'all are scary.

THE COURT: Yes, ma'am. Excuse me?

JUROR A. JOHNSON: Y'all are so scary.

THE COURT: So scary? Is this intimidating?

JUROR A. JOHNSON: Uh-huh, a little bit. I have a conference. I'm a schoolteacher, a preschool teacher, a director of our afternoon program. And the conference is Thursday and Friday.

THE COURT: We want you to make that, so we're going to give you an excuse.

JUROR A. JOHNSON: Okay. All right.

(Bench conference concluded.)

THE COURT: Anyone else?

37.

(Bench conference.)

THE COURT: Sorry to take your time, but that is some crazy stat that they look at that -- why, I don't know.

MR. BECK: If this woman is a bus driver, I'm calling for an investigation.

THE COURT: Yes, ma'am?

JUROR HARDING: I'm real embarrassed.

THE COURT: Why is that?

JUROR HARDING: (Indicates a wardrobe

malfunction.) My zipper split open and a lady in the restroom has got me all pinned up.

THE COURT: Well, I think that's a good reason. You know, this is the first --

JUROR HARDING: To sit through trial.

THE COURT: You know, I've had a lot of excuses. I tell you what I'm going to do to make you a special exception. I'm going to let you go right out of the courtroom and be on your way.

JUROR HARDING: I didn't know what I was going to do.

MR. CARROLL: That suit is beautiful.

JUROR HARDING: Thank you, but it's a little short.

(Bench conference concluded.)

THE COURT: Anyone else?

38.

(Bench conference.)

THE COURT: That's a first.

COURTROOM DEPUTY: She wanted to show it to you.

THE COURT: Yes, sir?

JUROR COX: This may not be a legitimate excuse, but I teach high school agriculture. And we've have got several activities coming up next week. I really need to be there.

THE COURT: That's a legitimate excuse, so we're going to give you --

JUROR COX: As much as I would like to listen to this, because my daughter is in nursing school, I really want to hear it. I hate to rat on those kids.

THE COURT: We're going to let you on -- if you'll just be patient with us and stay for a few more minutes.

JUROR COX: Appreciate it.

(Bench conference concluded.)

THE COURT: Anyone else that we haven't taken up your excuse?

Thank you for your patience and your willingness to serve.

(Bench conference.)

THE COURT: Let's go count the list and make sure we're all on the same page. I have excused for cause 4, 6, 12, 14, 18, 22, 25, 27, 29, 33, 34, 37, 39.

Where do we --

MR. BECK: Was that 38 or --

COURTROOM DEPUTY: 38.

MR. BECK: 37 was the last one, Judge.

MR. CARROLL: Judge, wait just a minute.

THE COURT: I thought it was 38 rather than 39.

COURTROOM DEPUTY: 39.

MR. CARROLL: Okay. 31 is not excused, right?

MR. BECK: Correct.

THE COURT: We're not going to reach 31 anyway.

MR. CARROLL: Okay. So that's -- that's 4 and 6 on the first page. 4, 6, 12, 14, 18 --

THE COURT: 22.

MR. CARROLL: -- 22, 25, and 27.

THE COURT: 29, 33.

MR. CARROLL: 33.

THE COURT: 34.

MR. CARROLL: And 34.

THE COURT: 37.

MR. CARROLL: And then 37 and 8.

THE COURT: We're going to have to let a young person come up here with you, Otis, if you can't --

MR. CARROLL: Judge, I tell you, I'm getting --

MR. BECK: Judge, the numbers have always been a problem for him.

MR. CARROLL: -- feeble. I'm feeble.

THE COURT: Other than writing up damage numbers.

MR. BECK: That's exactly right.

MR. CARROLL: But they're getting larger every month.

THE COURT: Okay. We're going to use a ten-person jury. Give each side six strikes, so we'll be striking --

COURTROOM DEPUTY: Through 31.

THE COURT: -- through 31.

MR. CARROLL: Six cuts each.

THE COURT: Six cuts each. Try to have them back in 15 minutes, because I want to let Chad have this courtroom as quickly as possible.

(Bench conference concluded.)

THE COURT: Very well, Ladies and Gentlemen. We appreciate your patience. We're going to take a 15-minute recess while the attorneys exercise their strikes. Then we'll come back in.

When you come back in, all the jurors be seated on the right-hand side of the courtroom, my right, in no particular location. We'll need the jury box emptied to seat the ten members of the panel that will serve.

So with those comments, we'll be in recess for 15 minutes.

COURT SECURITY OFFICER: All rise.

(Recess.)

COURT SECURITY OFFICER: All rise.

(Jury panel in.)

THE COURT: Please be seated.

I appreciate your patience. And at this time, we will seat the jury that will serve in this case. As your name is called, please come and have a seat in the order your name is called starting with Juror No. 1.

COURTROOM DEPUTY: Raymond McCormack, Linda Brown, Martha Doty.

THE COURT: We will put five on the bottom and five on the top.

COURTROOM DEPUTY: Robert Kipp, Debra Aldridge, Merle Crosse, Waylon Johnson, Bonnie Strauss, Richard Nash, and Shirley Shaw.

THE COURT: Is the jury fine with the parties?

MR. CARROLL: Good. Fine for the Plaintiff, Your Honor.

MR. BECK: Fine, Your Honor.

THE COURT: Ms. Martin, if you will render the jury oath.

COURTROOM DEPUTY: If you will stand and raise your right hand.

(Jury sworn.)

THE COURT: Very well.

For those of you not selected, we appreciate your attendance. Your numbers were necessary to complete this process.

You will have an exemption for two years at the federal level. So if you receive a jury notice, you have an exemption, but you're certainly welcome up here and serve if you'd like.

Your jury fee and mileage checks should be in the mail Thursday of next week.

COURTROOM DEPUTY: Tuesday.

THE COURT: Oh, okay. Sooner than expected.

If you don't receive it in a timely fashion, as I'm fond of saying, call Ms. Martin, not me. But with that, very shortly you will be excused. But, truly, we appreciate your service here today. We know it's an inconvenience.

For those of you selected to serve, Judge Everingham tells me it's going to take about two hours, same amount of time we used, to select the jury he is about to select.

So I'm going to suggest you be back a little before 2:00 o'clock. Needless to say, if you want to come back earlier, Mr. Potts, let's make the jury room available for your convenience and comfort. But if you have some shopping to do or whatever, you're welcome to stay or gone until a little before 2:00. And we're going to try to start promptly at 2:00 o'clock or very close thereto. And we have about an hour and a half, if the attorneys use all their time on opening.

And my experience is been -- has been, generally, lawyers are going to use all the time you give them. So that would take us to about 3:30.

And then I think we'll break for the day, because some of you may have things to do on Friday.

Then I have some housekeeping work I can do with the lawyers. And that way, we can all be out of here at a somewhat reasonable hour on Friday.

So we'll be in recess.

Now, for the lawyers, those of you that are going to be doing the opening, I want to talk about some of the slide issues that have arisen, and Mr. Keyzer will ask you to come around shortly.

I assume maybe you have color copies for my convenience, if you'll bring a copy, and we'll take those up, and then we'll take a lunch break.

We'll be in recess.

COURT SECURITY OFFICER: All rise.

(Recess.)

* * * * *

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/________________________ ____________________
SUSAN SIMMONS, CSR Date
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

/s/____________________ ________________
JUDITH WERLINGER, CSR Date
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10